

## **REMARKS**

### **I. Introductory Comments.**

Applicants thank the Examiner for the courtesies extended during an in-person interview with Michael B. Stewart on October 14, 2009. During the interview, the Examiner agreed that Applicants' Background and cited references fail to teach certain claim recitations, which is present in each of the pending independent claims. Accordingly, the pending claims are patentable over the cited references.

Claims 1, 3-9, and 11-31 are pending, and claims 1, 9, 17, and 24 are independent claims. No claims have been canceled or amended. In the Office Action, all of the pending claims, claims 1, 3-9, and 11-31, were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Applicants' Background of the Invention, U.S. Patent Application Publication No. 2002/0138416 ("Applicants' Background"), in view of Kalyan (U.S. Patent No. 6,266,655), and in further view of Norton (U.S. Patent Application Publication No. 2002/0091699).

In view of the following, all claims are believed to be in condition for allowance. Therefore, this response is believed to be a complete response to the Office Action. However, Applicants reserve the right to set forth further arguments supporting the patentability of their claims, including the separate patentability of the dependent claims not explicitly addressed herein, in future papers.<sup>1</sup> Further, for any instances in which the Examiner took Official Notice in the Office Action, Applicants expressly do not acquiesce to the taking of Official Notice, and respectfully request that the Examiner provide an affidavit to support the Official Notice taken in the next Office Action, as required by 37 CFR 1.104(d)(2) and MPEP § 2144.03.

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1. As Applicants' remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicants' silence as to assertions by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., whether a reference constitutes prior art, motivation to combine references, assertions as to dependent claims, etc.) is not a concession by Applicants that such assertions are accurate or such requirements have been met, and Applicants reserve the right to analyze and dispute such assertions/requirements in the future.

## **II. Independent Claims 1, 9, 17, and 24 Are Patentable Over The Cited References.**

Independent claims 1, 9, 17, and 24 were rejected under Section 103(a) as allegedly being unpatentable over Applicants' Background in combination with Kalyan and Norton. Of particular importance, the Examiner alleged that Applicants' Background teaches "assessing the risk to the organization based on the measured values of the one or more metric equations," as recited in independent claim 1. (Office Action, page 3.) However, during the interview with Applicants' representative, the Examiner acknowledged that Applicants' Background fails to teach or suggest "assessing the risk to the organization based on the measured values of the one or more metric equations," as recited in independent claim 1. Thus, for at least this reason, independent claim 1 is patentable over the cited references.

Although differing in scope, independent claims 9, 17, and 24 are also patentable over the cited references for at least the reasons discussed above with respect to claim 1. For example, independent claims 9, 17, and 24 each recites in part "thereby allowing a user to assess the risk to the organization based on the measured values of the one or more metric equations." Accordingly, as the Examiner acknowledged that Applicants' Background fails to teach or suggest the identified recitation, independent claims 9, 17, and 24 are also patentable over the cited references.

Further, Applicants believe that there are additional reasons why the claims are patentable over the cited references, and reserve the right to set forth those reasons in future papers.

### **CONCLUSION**

All rejections have been addressed. In view of the above, the presently pending claims are believed to be in condition for allowance. Accordingly, reconsideration and allowance are respectfully requested and the Examiner is respectfully requested to pass this application to issue.

It is believed that any fees associated with the filing of this paper are identified in an accompanying transmittal. However, if any additional fees are required, they may be charged to Deposit Account 18-0013, under order number 65632-0525. To the extent necessary, a petition for extension of time under 37 C.F.R. 1.136(a) is hereby made, the fee for which should be charged against the aforementioned account.

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Respectfully submitted,

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